

EXHIBIT E

Brent O. Hatch (5715)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Robert Silver (admitted pro hac vice)
Edward Normand (admitted pro hac vice)
Sean Eskovitz (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stephen N. Zack (admitted pro hac vice)
Mark J. Heise (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower, Ste. 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP,)	Case No. 2:03CV0294DAK
)	
Plaintiff,)	Hon. Dale A. Kimball
)	Magistrate Judge Brooke C. Wells
v.)	
)	
INTERNATIONAL BUSINESS)	DECLARATION OF
MACHINES CORPORATION,)	CHRISTOPHER SONTAG
)	
Defendant.)	

1. My name is Christopher S. Sontag, and I am Senior Vice President and General Manager of The SCO Group, Inc. ("SCO"). Unless otherwise noted or evident from context, this declaration is based on my personal knowledge.
2. I submit this Declaration in support of SCO's Memorandum in Opposition to Defendant/Counterclaim-Plaintiff IBM's Motion for Partial Summary Judgment on SCO's Contract Claims, and in support of SCO's Memorandum in Opposition to IBM's Motion for Partial Summary Judgment on IBM's Copyright Infringement Claim (the Eighth Counterclaim).
3. I have participated in the management, administration, and enforcement of SCO's UNIX System V ("SVRX") software agreements since 2002. Other than through express written agreements and for due consideration, SCO has never intended to waive and has always sought to protect and enforce its rights under those agreements. I am not aware of any instance – other than through such written agreements – in which SCO has intentionally waived any right to enforce any provision of any of those agreements.
4. IBM and Sequent are among SCO's SVRX licensees. SCO has concluded that IBM (which acquired Sequent after Sequent became an SVRX licensee) has violated its (and Sequent's) SVRX agreements by contributing to the Linux operating system source code from a derivative or modified work that IBM developed based on SVRX after entering into its SVRX agreements.
5. SCO did not know that IBM had contributed source code to Linux in violation of its (and Sequent's) SVRX licenses until December 2002 or January 2003.
6. In selling SCO Linux 4.0 and other products, SCO marketed features such as asynchronous I/O, enterprise volume management systems, better SMP scaling, and

journaling file system support ("JFS") because, according to SCO's partners in the UnitedLinux consortium, these features were included in the version of Linux contained in the pertinent SCO product.

7. With the sole exception of JFS, all the features were known simply by their appearance in Linux, not by where they originated. SCO had no knowledge that they were developed by IBM, or that they were derived from SCO's proprietary software licensed to IBM, or that they were contributed by IBM to Linux in violation of IBM's agreements with SCO.
8. SCO identified JFS in its marketing as "developed by IBM," but SCO did not know that JFS was derived from SCO's proprietary software licensed to IBM, or that it was contributed to Linux by IBM in violation of IBM's agreements with SCO.
9. SCO filed suit against IBM for breaching the IBM and Sequent software agreements within months of concluding that IBM had done so. SCO thereby expressly acted on and manifested its intent to enforce those licenses.
10. The same day it filed suit against IBM for breaching the SVRX agreements, on March 6, 2003, SCO sent a termination letter to IBM's Chief Executive Officer explaining that IBM's right to use or distribute any software product based on UNIX System V, including AIX, would be terminated on June 13, 2003, unless IBM cured those breaches. Exh. A hereto. SCO sent a similar letter to IBM regarding Sequent, and Dynix/ptx, on May 29, 2003. Exh. B hereto.
11. On July 12, 2003, SCO further demonstrated its intent to enforce its rights under those agreements by delivering a termination notice to IBM pursuant to Section 6.3 of the SVRX agreement. Exh. C hereto. After sending its termination letters, SCO had attempted to meet and confer with IBM, including through a meeting held on June 2,

2003, but IBM had failed to cure its breaches during the 100-day period provided in SCO's termination letter to IBM and the two-month period provided in SCO's termination letter to Sequent. Accordingly, effective June 13, 2003, SCO terminated IBM's SVRX agreements; and effective July 30, 2003, SCO terminated the Sequent SVRX agreements. Exhs. C and D hereto. SCO thus further demonstrated its intent to enforce its rights under those agreements.

12. After filing suit against IBM, SCO considered whether to continue to sell and market all of its Linux-related products, including SCO Linux Server 4.0. I was personally involved in those discussions at SCO.
13. In analyzing that question, an important consideration SCO took into account was its obligations to its existing customers. SCO took the view that SCO's customers were entitled to order SCO's products and updates from SCO for a period of time after becoming customers. See, e.g., Exh. E hereto ("Product Announcement for Linux Server 4.0," dated November 19, 2002, in which SCO promises to offer purchasers the "SCO Linux Update Service" for twelve months, including "Access to an up-to-date repository of UnitedLinux and other updates for their system."). SCO did not want to abandon its current customers unless there was no other alternative.
14. SCO decided that the most sensible solution was to suspend its sale and marketing of all of its Linux-related products effective May 14, 2003, but to continue to allow SCO's current customers (to whom SCO had obligations) to order such products.
15. By suspending the sale of its Linux-related products, including the operating system, services, support, professional services, education, and layered applications, SCO eliminated approximately 5-10% of its revenues. From May 14, 2003, until May 31,

2004 (when SCO last sold a unit of Linux Server 4.0), SCO sold 83 units and had 79 units returned, for a gross revenue of \$1,849.

16. In taking into account the foregoing considerations and reaching the foregoing decisions, SCO never intended to waive its right to enforce its SVRX agreements, including against IBM and Sequent.
17. In compliance with its contractual obligations, SCO has provided customers who purchased SCO Linux Server 4.0 Server files with access to the product through a secret, individual password that the customer could use at the log-in screen to SCO's website, and will continue to provide such access through December 31, 2004.
18. I understand that IBM claims that SCO made sixteen of IBM's copyrighted works available to the public through SCO's website. IBM's Kathleen Bennett contends (Bennett Decl. (8/5/04) ¶ 4; Bennett Decl. (8/16/04) ¶ 10) that access to these works was available on the following four web pages:
 - a. <http://linuxupdate.sco.com/scolinux/update/RPMS.updates>,
 - b. <http://Linuxupdate.sco.com/scolinux/SRPMS>,
 - c. <http://linuxupdate.sco.com/scolinux/update/RPMS.scolinux>, and
 - d. <ftp://ftp.sco.com/pub/updates/OpenLinux/3.1.1/server/CSSA-2002-026.0/SRPMS>.
19. The first three of the above-listed sites contained files related to SCO Linux Server 4.0 products. In accordance with SCO's agreements with its customers and with the UnitedLinux consortium, access to these and all other SCO Linux 4.0 download sites has always required password-protected authentication. For that purpose, those who registered SCO Linux 4.0 product received a login username and password to access the files. The website had a legal notice that access was limited to SCO's customers.

20. On September 23, 2003 an upgrade was done to the authentication mechanism on the download site, linuxupdate.sco.com. Through this upgrade, a bug in the authentication software was inadvertently introduced. If someone entered an invalid username or password (or both), they would simply have the login prompt re-represented to them up to 3 times. After three failed attempts, they would get an error message and be denied access. However, if they left the username and password fields blank on any attempt, the authentication process was delayed (by approximately 15-30 seconds) and access was eventually allowed.
21. Anyone who accessed the site by exploiting this bug would have known they were bypassing a security login – that is, hacking into the system.
22. On October 31, 2003, someone explained this password-bypass procedure on the internet at Slashdot.org. On February 18, 2004, news of this bug was posted on the SCOX message board at messages.yahoo.com. On March 4, 2004, SCO became aware of the problem and immediately fixed it.
23. On July 18, 2004, the authentication bug was inadvertently reintroduced when a SCO programmer was fixing an unrelated problem. SCO was unaware of this reoccurrence until August 23, 2004, when the problem was immediately repaired again.
24. SCO maintains server logs showing access to its download sites. The log files I analyzed demonstrate conclusively that the Ms. Bennett's IBM "team" never attempted to log in with a valid username on January 9, 2004. Instead, they immediately bypassed authentication by exploiting the bug.
25. The logs also show that between October 31 and December 1, 2003, IBM repeatedly accessed the SCO log-in site but did not obtain access to the SCO Linux Server 4.0 files.

The first successful exploit of the authentication bypass by an IBM host occurred on December 1, 2003. Apparently understanding the bug by that date, the Bennett team thereafter entered the site without authorization several more times between then and January 9, 2004. True and accurate excerpts from the pertinent logs, along with explanatory notes, are attached as Exh. F hereto.

26. According to the server log files, IBM never attempted to exploit the bug between March 4 and July, 18, 2004, the period when the initial repair of the authentication bug was in place. Therefore, IBM would have been unaware that SCO had repaired the bug in the authentication process when, as shown on Exh. F hereto, Ms. Bennett's team returned to the site without authorization on August 4, 2004, during the second period that the bug was active.
27. The logs confirm unauthorized accesses from IBM IP addresses, during which 51 files were downloaded, from January 9, 2004, to August 4, 2004, including the very files that IBM now relies on in its motions for summary judgment. Complete logs of all unauthorized downloads by IBM are available.
28. This is the text of the legal notice that was posted to sco.com on August 8, 2003:

NOTICE: SCO has suspended new sales and distribution of SCO Linux until the intellectual property issues surrounding Linux are resolved. SCO will, however, continue to support existing SCO Linux and Caldera OpenLinux customers consistent with existing contractual obligations. SCO offers at no extra charge to its existing Linux customers a SCO UNIX IP license for their use of prior SCO or Caldera distributions of Linux in binary format. The license also covers binary use of support updates distributed to them by SCO. This SCO license balances SCO's need to enforce its intellectual property rights against the practical needs of existing customers in the marketplace.

Dear SCO customer,

Starting on November 1, 2003, SCO will institute new procedures for you to access binary updates and source rpms. If you own an SCO licensed copy of Linux (such as OpenLinux, eDesktop, etc.) it will be necessary for you to register (or re-register) in order to continue to receive support files. During the registration process you will receive instructions on how the new access procedure will work or you can visit: http://www.sco.com/support/linux_info.html


This or similar text was on the site at all times IBM attempted (and obtained) access.

29. Access to the fourth website mentioned by Ms. Bennett, which contained only one of the sixteen programs (the Omni Print Driver), became subject to password protection on August 13, 2004. No files for SCO Linux Server 4.0 were ever available at that site.
30. The SCO Intellectual Property License for Linux is sold pursuant to written agreements, with the licensing clause worded similarly to that of the Questar agreement attached as Exhibit 33 to IBM's Motion for Summary Judgment on its Eighth Counterclaim. These licenses contain a release of claims, a covenant not to sue, and a waiver of any infringement claims SCO may have against the licensee. These licenses are solely for SCO's UNIX software.
31. Other than SCO Linux Server 4.0 and SCO Open Linux 3.1.1, no SCO product contained any of the sixteen programs at issue. SCO never modified any of the sixteen programs.

I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct

November 30, 2004



Christopher Sontag